

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA SURGICAL
INSTITUTE, INC., a California
corporation,

Plaintiff,

vs.

AETNA LIFE AND CASUALTY
(BERMUDA) LTD., a corporation
form unknown; AETNA, INC., a
corporation form unknown; and
DOES 1 to 50, inclusive,

Defendants.

CASE NO. SA CV 17-00310 AG (PLAx)
Magistrate Judge: Paul L. Abrams

QUALIFIED PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Health Insurance Portability and Accountability Act of 1996, and for good cause, the Court issues this Qualified Protective Order. Unless modified pursuant to the terms contained in this Order, this Order shall remain in effect through the conclusion of this litigation.

IT IS ORDERED THAT:

1. Scope of Protection

This Protective Order shall govern any record of information produced in this action and designated pursuant to this Protective Order, including all

1 designated deposition testimony, all designated testimony taken at a hearing or
2 other proceeding, all designated deposition exhibits, interrogatory answers,
3 admissions, documents and other discovery materials, whether produced
4 informally or in response to interrogatories, requests for admissions, requests for
5 production of documents or other formal methods of discovery.

6 This Protective Order shall also govern any designated record of information
7 produced in this action pursuant to required disclosures under any federal
8 procedural rule or local rule of the Court and any supplementary disclosures
9 thereto.

10 This Protective Order shall apply to the parties and to any nonparty from
11 whom discovery may be sought who desires the protection of this Protective Order.

12 **2. Definitions**

13 The term Confidential Information shall mean confidential or proprietary
14 technical, scientific, financial, business, health, or medical information designated
15 as “CONFIDENTIAL” by the producing party.

16 The term Confidential Health Information shall constitute a subset of
17 Confidential Information, and shall be designated as “CONFIDENTIAL” and
18 subject to all other terms and conditions governing the treatment of Confidential
19 Information. Confidential Health Information shall mean information supplied in
20 any form, or any portion thereof, that identifies an individual or subscriber in any
21 manner and relates to the past, present, or future care, services, or supplies relating
22 to the physical or mental health or condition of such individual or subscriber, the
23 provision of health care to such individual or subscriber, or the past, present, or
24 future payment for the provision of health care to such individual or subscriber.
25 Confidential Health Information shall include, but is not limited to, claim data,
26 claim forms, grievances, appeals, or other documents or records that contain any
27 patient health information required to be kept confidential under any state or
28 federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the

1 Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R.
2 §§ 164.501 & 160.103), and the following subscriber, patient, or member
3 identifiers:

- 4 a. names;
- 5 b. all geographic subdivisions smaller than a State, including street
6 address, city, county, precinct, and zip code;
- 7 c. all elements of dates (except year) for dates directly related to an
8 individual, including birth date, admission date, discharge date, age,
9 and date of death;
- 10 d. telephone numbers;
- 11 e. fax numbers;
- 12 f. electronic mail addresses;
- 13 g. social security numbers;
- 14 h. medical record numbers;
- 15 i. health plan beneficiary numbers;
- 16 j. account numbers;
- 17 k. certificate/license numbers;
- 18 l. vehicle identifiers and serial numbers, including license plate
19 numbers;
- 20 m. device identifiers and serial numbers;
- 21 n. web universal resource locators (“URLs”);
- 22 o. internet protocol (“IP”) address numbers;
- 23 p. biometric identifiers, including finger and voice prints;
- 24 q. full face photographic images and any comparable images; and/or
- 25 r. any other unique identifying number, characteristic, or code.

26 The term Technical Advisor shall refer to any person who is not a party to
27 this action or not presently employed by the receiving party or a company affiliated
28 through common ownership, who has been designated by the receiving party to

1 receive another party's Confidential Information, including Confidential Health
2 Information. Each party's Technical Advisors shall be limited to such person as, in
3 the judgment of that party's counsel, are reasonably necessary for development and
4 presentation of that party's case. These persons include outside experts or
5 consultants retained to provide technical or other expert services such as expert
6 testimony or otherwise assist in trial preparation.

7 **3. Designation of Information**

8 Documents and things produced or furnished during the course of this action
9 shall be designated as containing Confidential Information, including Confidential
10 Health Information, by placing on each page, each document (whether in paper or
11 electronic form), or each thing a legend substantially as follows:

12 **CONFIDENTIAL**

13 A party may designate information disclosed at a deposition as Confidential
14 Information by requesting the reporter to so designate the transcript at the time of
15 the deposition.

16 A producing party shall designate its discovery responses, responses to
17 requests for admission, briefs, memoranda and all other papers sent to the court or
18 to opposing counsel as containing Confidential Information when such papers are
19 served or sent.

20 A party shall designate information disclosed at a hearing or trial as
21 Confidential Information by requesting the court, at the time the information is
22 proffered or adduced, to receive the information only in the presence of those
23 persons designated to receive such information and court personnel, and to
24 designate the transcript appropriately.

25 The parties will use reasonable care to avoid designating any documents or
26 information as Confidential Information that is not entitled to such designation or
27 which is generally available to the public. The parties shall designate only that part
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1 of a document or deposition that is Confidential Information, rather than the entire
2 document or deposition.

3 **4. Disclosure and Use of Confidential Information**

4 Information that has been designated Confidential shall be disclosed by the
5 receiving party only to Qualified Recipients. All Qualified Recipients shall hold
6 such information received from the disclosing party in confidence, shall use the
7 information only for purposes of this action and for no other action, and shall not
8 use it for any business or other commercial purpose, and shall not use it for filing
9 or prosecuting any patent application (of any type) or patent reissue or
10 reexamination request, and shall not disclose it to any person, except as hereinafter
11 provided. All information that has been designated Confidential shall be carefully
12 maintained so as to preclude access by persons who are not qualified to receive
13 such information under the terms of this Order.

14 In the event that any receiving party's briefs, memoranda, discovery
15 requests, requests for admission or other papers of any kind which are served or
16 filed shall include another party's Confidential Information, the papers shall be
17 appropriately designated and shall be treated accordingly.

18 All documents, including attorney notes and abstracts, which contain another
19 party's Confidential Information, shall be handled as if they were designated
20 pursuant to paragraph 3.

21 If Confidential Information is included in any documents, papers or
22 transcripts filed with the Court, such papers shall be accompanied by an
23 application to file the papers – or the confidential portion thereof – under seal. The
24 application must demonstrate good cause for the under seal filing. Pending the
25 ruling on the application, the papers or portions thereof subject to the sealing
26 application shall be lodged under seal.

27 **5. Qualified Recipients**

28 For purposes of this Order, the term Qualified Recipient means

- a. Outside counsel of record for any party in this action, as well as employees of such counsel (excluding experts and investigators) assigned to and necessary to assist such counsel in the preparation and trial of this action;
- b. Representatives, officers, or employees of a party as necessary to assist outside counsel in the preparation and trial of this action;
- c. Witnesses who testify by deposition or at trial who, if not a representative, officer, or employee of a party, shall be advised about the terms of this Order and that such Order is applicable to them in connection with their testimony and do not retain copies of Confidential Information;
- d. Persons who were authors or recipients of the Confidential Information or previously had legal access to Confidential Information;
- e. Technical Advisors, expert witnesses, or consultants engaged by a party to assist with the preparation and trial of this action provided such expert or consultant agrees in writing, in the form attached at Appendix A, to be bound by the terms of this Order;
- f. Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff, provided that such individuals agree in writing, in the form attached at Appendix A, to be bound by the terms of this Order;
- g. Stenographers and videographers engaged to transcribe or record depositions conducted in this action provided that such individuals agree in writing, in the form attached at Appendix A, to be bound by the terms of this Order; and
- h. The Court and its support personnel.

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1 **6. Nonparties**

2 Any nonparty who produces documents or other information in response to
3 discovery requests or subpoenas in this litigation shall be entitled to the benefits
4 and protections of this Order and shall be entitled to seek additional protections.

5 The parties agree that they will treat Confidential Information produced by
6 nonparties according to the terms of this Order.

7 Nonparties may challenge the confidentiality of Confidential Information by
8 filing a motion to intervene and a motion to de-designate.

9 **7. Inadvertent Failure to Designate**

10 In the event that a producing party inadvertently fails to designate any of its
11 information pursuant to paragraph 3, it may later designate by notifying the
12 receiving parties in writing. The receiving parties shall take reasonable steps to see
13 that the information is thereafter treated in accordance with the designation.

14 It shall be understood however, that no person or party shall incur any
15 liability hereunder with respect to disclosure that occurred prior to receipt of
16 written notice of a belated designation.

17 **8. Inadvertent Disclosure**

18 In the event of an inadvertent disclosure of another party's Confidential
19 Information to a non-Qualified Recipient, the party making the inadvertent
20 disclosure shall promptly upon learning of the disclosure: (i) notify the person to
21 whom the disclosure was made that it contains Confidential Information subject to
22 this Order; (ii) make all reasonable efforts to preclude dissemination or use of the
23 Confidential Information by the person to whom disclosure was inadvertently
24 made including, but not limited to, obtaining all copies of such materials from the
25 non-Qualified Recipient; and (iii) notify the producing party of the identity of the
26 person to whom the disclosure was made, the circumstances surrounding the
27 disclosure, and the steps taken to ensure against the dissemination or use of the
28 information.

1 **9. Challenge to Designation**

2 Any challenge to the designation or disclosure of Confidential Information
3 must occur within the discovery period established by the District Judge.

4 At any time after the delivery of Confidential Information, counsel for the
5 party receiving the Confidential Information may challenge the designation of all
6 or any portion thereof by providing written notice thereof to counsel for the party
7 disclosing or producing the Confidential Information.

8 In the event of a dispute regarding the designation or disclosure of
9 Confidential Information, the parties may seek Court intervention by following the
10 procedure set forth in Local Rule 37. If the parties wish to file the Joint Stipulation
11 required by Local Rule 37 under seal, the parties may filed a stipulation to that
12 effect, or the moving party may file an ex parte application making the appropriate
13 request. The parties must set forth good cause in the stipulation or ex parte
14 application as to why the Joint Stipulation or portions thereof should be filed under
15 seal.

16 All Confidential Information is entitled to confidential treatment pursuant to
17 the terms of this Order until and unless the parties formally agree in writing to the
18 contrary, a party fails to timely challenge the disclosure of Confidential
19 Information, or a contrary determination is made by the Court as to whether all or a
20 portion of designated Confidential Information is entitled to confidential treatment.

21 **10. Trial**

22 Once a case proceeds to trial, all of the court-filed information that is to be
23 introduced and was previously designated as Confidential Information and/or kept
24 and maintain pursuant to the terms of a protective order becomes public and will
25 be presumptively available to all members of the public, including the press, unless
26 compelling reasons are supported by specific factual findings to proceed otherwise
27 are made to the District Judge in advance of the trial. See, e.g., Hagestad v.
28 Tragesser, 49 F.3d 1430, 1434 (9th Cir. 1995); San Jose Mercury News, Inc. v.

1 U.S. District Court – Northern District, 187 F.3d 1096, 1102 (9th Cir. 1999);
2 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir.
3 2006) (distinguishing “good cause” showing for sealing documents produced in
4 discovery and attached to non-dispositive motions from “compelling reasons”
5 standard when merits-related documents are part of the judicial record). The Court
6 will not enter a protective order that extends beyond the commencement of trial.

7 **10. Conclusion of Action**

8 At the conclusion of this action, including through all appeals, each party or
9 other person subject to the terms hereof shall be under an obligation to destroy or
10 return to the producing party all materials and documents containing Confidential
11 Information and to certify to the producing party such destruction or return. Such
12 return or destruction shall not relieve said parties or persons from any of the
13 continuing obligations imposed upon them by this Order.

14 The provisions of this paragraph shall not be binding on the United States,
15 any insurance company, or any other party to the extent that such provisions
16 conflict with applicable Federal or State law. The Department of Justice, any
17 insurance company, or any other party shall notify the producing party in writing
18 of any such conflict it identifies in connection with a particular matter so that such
19 matter can be resolved either by the parties or by the Court.

20 **11. Jurisdiction to Enforce Protective Order**

21 After the termination of this action, the Court will continue to have
22 jurisdiction to enforce this Order.

23 **12. Modification of Protective Order**

24 This Order is without prejudice to the right of any person or entity to seek a
25 modification of this Order at any time either through stipulation or Order of the
26 Court.

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1 **13. Confidentiality of Party's Own Documents**

2 Nothing herein shall affect the right of the designating party to disclose to its
3 officers, directors, employees, attorneys, consultants or experts, or to any other
4 person, its own information. Such disclosure shall not waive the protections of this
5 Protective Order and shall not entitle other parties or their attorneys to disclose
6 such information in violation of it, unless by such disclosure of the designating
7 party the information becomes public knowledge. Similarly, the Protective Order
8 shall not preclude a party from showing its own information, including its own
9 information that is filed under seal by a party, to its officers, directors, employees,
10 attorneys, consultants or experts, or to any other person.

11 **14. Compulsory Disclosure to Third Parties**

12 If any receiving party is subpoenaed in another action or proceeding or
13 served with a document or testimony demand or a court order, and such subpoena
14 or demand or court order seeks Confidential Information, including Confidential
15 Health Information of a producing party, the receiving party shall give prompt
16 written notice to counsel for the producing party and allow the producing party an
17 opportunity to oppose such subpoena or demand or court order prior to the
18 deadline for complying with the subpoena or demand or court order. No
19 compulsory disclosure to third parties of information or material exchanged under
20 this Order shall be deemed a waiver of any claim of confidentiality, except as
21 expressly found by a court or judicial authority of competent jurisdiction.

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1 **15. Binding Effect**

2 This Order shall be binding upon the parties and their attorneys, successors,
3 executors, personal representatives, administrators, heirs, legal representatives,
4 assigns, subsidiaries, divisions, employees, agents, independent contractors, or
5 other persons or organizations over which they have control.

6 **IT IS SO ORDERED.**

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8 DATED: October 18, 2017

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Paul L. Abrams
United States Magistrate Judge

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**APPENDIX A – PROTECTIVE
ORDER UNDERTAKING**

I, _____, declare that:

1. My address is _____. My
current employer is _____. My current
occupation is _____.

2. I have received a copy of the Qualified Protective Order in this action.
I have carefully read and understand the provisions of the Qualified Protective
Order.

3. I will comply with all of the provisions of the Qualified Protective
Order and agree to be bound by the Qualified Protective Order. I will hold in
confidence, will not disclose to anyone not qualified under the Qualified Protective

1 Order, and will use only for purposes of this action any Confidential Information
2 or information designated as “Confidential” that is disclosed to me.

3 4. Promptly upon termination of the relevant action, I will either return
4 in full to the outside counsel for the party by whom I am employed or completely
5 destroy all documents and things designated as “Confidential” that came into my
6 possession, and all documents and things that I have prepared relating thereto.

7 5. I understand that the obligations of this undertaking and the provisions
8 of the Qualified Protective Order continue past the termination of the action.

9 6. I hereby submit to the jurisdiction of this Court for the purpose of
10 enforcement of the Qualified Protective Order in this action.

11 I declare under penalty of perjury that the foregoing is true and correct.

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13 Signature _____

14 Date _____
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